IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITON NO. 1131 OF 2007

with

CRIMINAL WRIT PETITION NO. 1132 OF 2007

CRIMINAL W.P. NO. 1131 OF 2007

Naeem Shaikh .. Petitioner

Vs.

Shri Arjunan Karunakaran & Anr. Respondents

with

CRIMINAL W.P. NO. 1132 OF 2007

Mohammed Parvez Alam & Anr. ... Petitioners

Vs.

Shri Arjunan Karunakaran & Anr. ... Respondents

Mr. P.L.Bhujbal, Advocate for petitioners (in both matters).

Mrs. S.V.Gajre, APP, for State (in W.P.1131/2007)

Mrs. M.H.Mhatre, APP, for State (in W.P.1132/2007)

CORAM: J.H.BHATIA,J.

DATE : 28th June, 2007.

P.C.

1. Both these petitions are filed by the accused persons in R.C.C. No.217 of 2007 registered on the basis of the complaint lodged by respondent No.1. The complaint was under Sections 120(A)(B), 415, 417, 420, 421, 463, 464, 477, 471, 468 read with section 34 of I.P.C. against the petitioners.

2. The learned J.M.F.C.Vashi, after recording the verificatioon statement and perusal of the documents, found that prima facie, the dispute was of civil nature, but taking into consideration the complaint supported by the documents, the enquiry under Section 202 of Cr.P.C. would not serve the purpose and investigation under Section 156(3) of Cr.P.C. was necessary. With these observations, the learned J.M.F.C. directed the concerned police statioon to register the offence and submit report after investigation under section 156(3) of Cr.P.C.

2. The learned Counsel for the petitioners contends that once the cognizable offence was registered, there is every possibility that the police may arrest the petitioners and they may be harassed. According to him,

in view of the fact that the J.M.F.C. also found that, prima facie, it was a dispute of civil in nature, the direction given by the Magistrate should be quashed. I am not satisfied with this contention, particularly in view of the observations made by the J.M.F.C. that investigation is necessary. It is well-settled position of law that police should not be stopped from investigating the offence when registered. However, in view of the apprehension of the petitioners' arrest and haraqssment, in the interest of justice, some direction may be given to the police.

3. Therefore, in case the Investigating Officer finds it necessary to arrest the petitioners in the said crime, he shall give 72 hours' clear notice to the petitioners so that they may seek appropriate remedy against arrest. However, the petitioners shall make themselves available to the police as and when required during day time for the purpose of proper investigation in the matter.

With these directions, both the Petitions are dispose of.

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(J.H.BHATIA,J.)